IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 24214 of 2003

Between:

N.Parvathalu, S/o.late Mallaiah, Retired ADC,
Thummalagudem, Nalgonda Dist.

....PETITIONER

AND

1 A.P.S.R.T.C., Rep. by its Regional Manager, Nalgonda Region,

Nalgonda.
2 The Depot Manager, A.PS.R.T.C., Bus Depot, Nalgonda, Nalgonda Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction particularly one in the nature of writ of mandamus declaring the impugned action of the respondents in not counting the interregnum period of removal for the purpose of payment of gratuity as arbitrary, unjust and contrary to the purport of relief of relief of reinstatement with continuity of service and other benefits and consequently direct the respondents to pay the gratuity for the removal period i.e., from 19-2-1991 to 5-5-1997 in the interest of justice and fair play.

Counsel for the Petitioner: MR.V.NARASIMHA GOUD

Counsel for the Respondent: MR.V.T.M.PRASAD, SC FOR APSRTC

The Court made the following:

ORDER:

Heard Sri V.Narsimha Goud, the learned counsel appearing for the petitioner, and Sri V.T.M.Prasad, the learned Standing Counsel for the respondent Corporation.

The petitioner, who is a retired ADC worked with the respondent Corporation, filed this writ petition, *inter alia*, seeking a writ of Mandamus declaring the action of the respondents in not counting the interregnum period of removal for the purpose of payment of gratuity as illegal.

The case of the petitioner in brief is that initially he was removed from service on certain allegations on 19.02.1991. Thereafter, in pursuance of an award passed in I.D.No.19 of 1993 by the Labour Court, Hyderabad, on 06.12.1996, he was reinstated with continuity of service. Subsequently, he retired from service on 31.01.2002. Thereafter, he made a demand for payment of gratuity as per the legal notice got issued on 18.08.2003. In spite of the same, no payment is forthcoming. Hence, the writ petition.

The learned counsel for the petitioner submits that the entire approach of the respondents in not counting the interregnum period i.e., from the date of removal till the date of reinstatement, for the

purpose of payment of gratuity is wholly unsustainable and illegal.

The learned Standing Counsel for the respondents submits that having regard to the fact that Labour Court has not granted any back wages, it would not tantamount that the petitioner continues to be in service and therefore no gratuity can be reckoned on that basis.

Considering the submissions made on either side and also on perusal of the material, the only question that arises for consideration is as to whether, under the facts and circumstances of the case where the petitioner was reinstated with continuity of service though without back wages, he is entitled to claim the entire period as in service for payment of gratuity?

There is no dispute to the facts as mentioned above and the period in dispute is only from the date of removal to that of reinstatement. Aforesaid question is no longer *res integra*. This Court in **M.Rama Rao v Assistant Traffic Manager, APSRTC, Hyderabad and another**, held that where Labour Court sets aside the order of removal and directs continuity of service, the Management cannot deny payment of gratuity on retirement on the ground that the petitioner is out of employment as a result of order of removal.

Following the same, it has to be held that the petitioner shall be deemed to be in service in view of the continuity of service as awarded by the Labour Court and the said interregnum period in its entirety has to be reckoned for the purpose of payment of gratuity.

Accordingly, the writ petition is allowed. The respondents shall pay the gratuity payable to the petitioner within a period of two months from the date of receipt of a copy of this order. No costs.

23.12.2004

VGB

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, The Twenty Third Day of December, Two Thousand and Four.

To

1 The Regional Manager, A.P.S.R.T.C., Nalgonda Region,

Nalgonda.
2 The Depot Manager, A.PS.R.T.C., Bus Depot, Nalgonda, Nalgonda Dist.

3 2CD copies